

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA HABRA, CALIFORNIA, MAKING THE REQUIRED FINDINGS AND APPROVING CONDITIONAL USE PERMIT 22-31 TO ALLOW THE OPERATION OF A DRIVE-THROUGH RESTAURANT (DBA: DUNKIN' DONUTS) WITHIN ONE TENANT SPACE AT 711 EAST IMPERIAL HIGHWAY, AS PER THE APPROVED PLANS AND SUBJECT TO CONDITIONS, AND MAKING A DETERMINATION THAT THE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15303, CLASS 3: "NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES" AND SECTION 15061(B)(2) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES

THE PLANNING COMMISSION OF THE CITY OF LA HABRA, CALIFORNIA HEREBY FINDS AND DECLARES AS FOLLOWS:

- A. The Applicant, Paraj Patel, submitted Conditional Use Permit 22-31 to operate a drive-through restaurant (Dunkin' Donuts) within one of the tenant spaces located at 711 East Imperial Highway (the "Project") on November 9, 2023.
- B. On September 24, 2018, the Planning Commission approved resolutions recommending City Council approval of Mitigated Negative Declaration 17-02 (the "MND"), Planned Unit Development Master Plan No.17-01 (the "Master Plan") and a Development Agreement between the City of La Habra and Greg S. Jones Revocable Trust and Sunny Investments, LLC (the "Development Agreement") for the development of the properties at 701-751 E. Imperial Highway. The Planning Commission also approved Tentative Parcel Map No. 2017-154 to divide the property into four parcels; and Conditional Use Permits (CUPs) to allow the operation of a hotel with alcohol sales on Parcel 1 and drive-through restaurants on Parcels 2 and 3 with Parcel 4 vacant, but to be developed in the future with a permitted use.
- C. On December 3, 2018, the City Council approved the MND; and subsequently on December 18, 2018 adopted ordinances approving the Master Plan and Development Agreement.
- D. Popeye's Louisiana Kitchen chose not to move forward with development of a drive-through restaurant on subject site (Parcel 2). Subsequent recitals indicate that a CUP is thus required for a new restaurant on the site.
- E. Pursuant to Section 18.52.110 (Conformance) of Chapter 18.52 (PUD Planned Unit Development Overlay Zone) of the La Habra Municipal Code, after the adoption of a planned unit development ordinance, and prior to the issuance of any building permit, a final development plan is required to be

prepared and final subdivision map or parcel map recorded, if either is involved. The final development plan shall conform to the ordinance adopting the planned unit development and shall show to scale all buildings, off-street parking facilities, landscaping, finished grades and such other details as will suffice to indicate conformance with all the features, conditions and characteristics upon which the approval was predicated. Development of the hotel (dba: La Quinta Inn and Suites) on Parcel 1 is underway and a drive-through restaurant (dba: Taco Bell) has been constructed and is in operation on Parcel 3. The plans that were approved by Planning Commission in conjunction with the CUP for the hotel and the Taco Bell met the requirements for a final development plan, as required by Section 18.52.110.

- F. The Final Map for the Tentative Parcel Map was approved by City Council on April 6, 2020 and recorded on May 14, 2020. All on-site utilities have been installed, the required drive aisles have been constructed, and the required intersection improvements were completed as per the Master Plan.
- G. On April 25, 2022, the Planning Commission recommended approval of a Precise Plan on Parcel 4 for the development of 6,250 square foot commercial building (dba: Hallmark), and which was subsequently approved by City Council by adoption of Ordinance No. 1842 on June 6, 2022.
- H. It has been determined that the Development Agreement and Master Plan that apply to the subject site and the other parcels on the property do not need to be amended to accommodate the proposed Project in that the proposed use is in substantial conformance with the uses contemplated by the Master Plan pursuant to LHMC Section 18.52.130 (Re-approval required) and Recital D and Standard Condition No. 1.6 of the Development Agreement.
- I. The Applicant is now requesting to develop the subject site with a new two-tenant commercial building and allow the operation of a new drive-through restaurant (dba: Dunkin' Donuts) within one of the tenant spaces. As a result, the proposed project requires approval of a new Precise Plan and CUP.
- J. The Project was originally noticed and advertised as being consistent with certified Mitigated Negative Declaration 17-02, approved in conjunction with Planned Unit Development Master Plan 17-01, for the purposes of environmental review, pursuant to the California Environmental Quality Act (CEQA). Upon further review, staff has determined that the proposed Project is Categorical Exempt from CEQA pursuant to CEQA Guidelines Section 15303, Class 3 "New Construction or Conversion of Small

Structures.” This exemption class consists of the construction and location of limited numbers of new, small facilities or structures, including commercial uses not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not sensitive. As described in the staff report, the proposed two-unit commercial building would be 3,875 square feet. In addition, the Project is proposed on a parcel that was part of Planned Unit Development Master Plan 17-01. The infrastructure required for the implementation of this Master Plan has been constructed. The proposed Project does not meet any of the exceptions described in Section 15300.2 of the CEQA Guidelines. The location of the Project is predominantly urban and not considered a sensitive environment; therefore, the Project will not result in any significant impacts that may otherwise occur in a sensitive environmental area. The cumulative impact of this Project, and the approval of other projects like it in the vicinity, is not expected to have any significant environmental impact. The Project is not located along any state designated scenic highway nor within any designated hazardous waste site. Staff does not expect any significant impacts or unusual circumstances related to the approval and construction of this Project. Therefore, pursuant to the provision under Section 15061(B)(2) of the California Environmental Quality Act Guidelines, the Project is categorically exempt from CEQA.

- K. On August 28, 2023, the Planning Commission held a duly noticed public hearing to consider the Applicant’s request to approve Conditional Use Permit 22-31 to operate a drive-through restaurant (Dunkin’ Donuts) within one of the tenant spaces of the 3,875 square foot, dual tenant commercial building proposed in conjunction with Planned Unit Development Precise Plan 22-02.
- L. The approval of Conditional Use Permit 22-31 will be contingent upon the Applicant obtaining City Council approval of Planned Unit Development Precise Plan 22-02.
- M. In making the various findings set forth in this Resolution, the Planning Commission has considered all of the evidence presented by staff, the Applicant, and the public, whether written or oral, and has considered the procedures and standards required by the La Habra Municipal Code for Conditional Use Permit 22-31.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LA HABRA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The Planning Commission finds and determines that the Project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303, Class 3: “New Construction or Conversion of Small Structures” and Section 15061(b)(2) of the California Environmental Quality Act Guidelines. The proposed project does not meet any of the exceptions described in Section 15300.2 of the CEQA Guidelines. The location of the Project is predominantly urban and not considered a sensitive environment; therefore, the Project will not result in any significant impacts that may otherwise occur in a sensitive environmental area. The cumulative impact of this Project, and the approval of other projects like it in the vicinity, is not expected to have any significant environmental impact. The Project is not located along any state designated scenic highway nor within any designated hazardous waste site. Staff does not expect any significant impacts or unusual circumstances related to the approval and construction of this Project. Therefore, pursuant to the provision under Section 15061(B)(2) of the California Environmental Quality Act Guidelines, the Project is categorically exempt from CEQA.

SECTION 2. CONDITIONAL USE PERMIT 22-31. The Planning Commission finds and determines that the Applicant has succeeded in meeting its burden of providing evidence to support the granting of Conditional Use Permit 22-31 for the operation of a drive-through restaurant and approves Conditional Use Permit 22-31 based on the following findings required by Section 18.66.070.C of the La Habra Municipal Code and subject to the conditions attached hereto as **Exhibit A**. Notwithstanding the foregoing, the approval of Conditional Use Permit 22-31 will be contingent upon the Applicant obtaining City Council approval of Planned Unit Development Precise Plan 22-02. Non-approval of Planned Unit Development Precise Plan 22-02 shall render Conditional Use Permit 22-31 null and void.

- A. The granting of such Conditional Use Permit will not be detrimental to the public welfare and will not unreasonably interfere with the use, possession, and or enjoyment of surrounding and adjacent properties and will not impair the character of the zone in which it is to be located.**

The proposed project is part of a Master Plan that includes a hotel, a retail store, and another drive-through restaurant. The site is also surrounded by other commercial industrial properties that also include retail uses, offices, industrial uses and restaurants. The proposed project will comply with all applicable development standards of the PC-I Zone. Furthermore, a traffic assessment and vehicle queuing analysis were conducted, which showed that the site’s driveways and surrounding streets can accommodate the vehicle traffic of the proposed uses, and that the drive lane for the drive-through can accommodate three more vehicles than the maximum average anticipated peak queue, for a total of 12 vehicles without encroaching into the drive aisle. Additionally, the closest residential properties are situated

south across the six-lane Imperial Highway, which is surrounded by 14-foot tall masonry sound walls and are over 130 feet away. Thus, no impacts to the residential properties are anticipated. Therefore, the granting of the CUP will not be detrimental to the public welfare or unreasonably interfere with the use, possession or enjoyment of other surrounding and adjacent properties or impair the character of the PC-I Zone, since the proposed project includes comparable uses.

B. The subject site is physically suitable for the type of land use being proposed.

The proposed drive-through restaurant will be located within a 3,875 square foot two-tenant building that covers only 10% of the site's lot area. Additionally, the building orientation and site layout will be similar to a previously approved drive-through restaurant for the subject site, showing that the site has been previously considered appropriate for a similar building. The proposed drive-lane for the drive-through restaurant can accommodate three more vehicles than the maximum number of vehicles expected during peak periods, per the queuing analysis, and the proposed parking meets the parking required by the LHMC for the proposed use. The project is also in compliance with all applicable development standards. Therefore, the site is physically suitable for the type of land use being proposed.

C. The use is conditionally permitted within the subject zone and complies with the intent of all applicable provisions of this title.

Pursuant to La Habra Municipal Code (LHMC) Table 18.06.040.A, the operation of a restaurant located within the PC-I Zone is allowed, subject to the approval of a CUP. The project plans associated with the CUP have been reviewed for compliance with all applicable development standards. A Code-compliant number of parking spaces are provided for the proposed drive-through restaurant. Additionally, there is a reciprocal access and parking easement which was previously approved that allows all of the businesses in the same Master Plan to utilize shared parking spaces. It should be noted that vehicular queuing and parking for the Dunkin' Donuts and future retail use is expected to be confined to Parcel 2 and no traffic spillover impacts or vehicular traffic impacts are anticipated to the properties within the Master Plan. Therefore, the proposed drive-through Dunkin' Donuts will comply with the intent of all applicable provisions of the LHMC.

D. The granting of this Conditional Use Permit is consistent with the comprehensive General Plan.

The drive-through restaurant is consistent with La Habra's General Plan Policy LU 2.2 which encourages "the development of a broad range of uses in La Habra's commercial centers and corridors that reduce the need to travel to adjoining communities and which subsequently capture a greater share of local spending." The proposed restaurant will provide residents of the City and employees/customers of surrounding commercial, industrial, and medical businesses with an additional dining option. It is also consistent with General Plan Policy LU 3.8, which encourages cohesive and integrated development by permitting a use that has been previously determined to be compatible and suitable for the Master Plan. The building will complement the colors and material used on the other buildings to ensure compatibility. Lastly, the proposed project will further fulfill General Plan Policy ED 2.1, which encourages the attraction of national-brand and proven local area businesses that provide fiscal and employment benefits for the City, since the proposed project is for the operation of a national-brand franchise, Dunkin' Donuts. Therefore, granting the CUP is consistent with the General Plan.

SECTION 3. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM.

The Applicant's proposal has been reviewed pursuant to the requirements of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Permit, the Local Implementation Plan (LIP), and the Model Water Quality Management Plan (WQMP), Section 7.2. Since the proposed Project will constitute the disturbance of more than 5,000 square feet of soil, a Priority WQMP is required. A Preliminary Priority WQMP has been reviewed and approved. The Final WQMP will be required prior to the issuance of a building permit final.

SECTION 4. APPEAL. The approvals granted by this Resolution may be appealed within 10 working days from adoption of this Resolution. All appeals must be in writing and filed with the City Clerk within this time period with the appropriate fee. Failure to file a timely written appeal will constitute a waiver of any right of appeal.

SECTION 5. RECORD. Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Project. All summaries of information in the findings which precede this section are based on the entire record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately.

SECTION 7. CERTIFICATION. The Secretary shall certify the passage of this Resolution.

PASSED, APPROVED, AND ADOPTED this 28th day of August, 2023.

Esther Rojas, Chair

I, Veronica Lopez, Secretary to the Planning Commission of the City of La Habra, do hereby certify that the foregoing Resolution No. _____ was adopted at a regular meeting of the City of La Habra Planning Commission held on August 28, 2023 by the following vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSTAIN:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

Veronica Lopez, Secretary

EXHIBIT A

CONDITIONAL USE PERMIT 22-31 CONDITIONS OF APPROVAL

General Conditions:

Standard Condition 1.1 CODE COMPLIANCE

The property owner/business operator shall comply with the City of La Habra Municipal Codes and all applicable ordinances.

Standard Condition 1.4 LA COUNTY FIRE DEPARTMENT

The property owner/business operator shall comply with the Los Angeles County/La Habra Fire Code and Fire Department requirements, as applicable.

Standard Condition 1.5 MINOR MODIFICATIONS

The Director of Community and Economic Development or designee may approve minor modifications through the Administrative Adjustment process to the conditions of approval and project plans so long as the intent of the Planning Commission or City Council is maintained.

Standard Condition 1.7 COMPLIANCE

The failure to comply with any of these conditions of approval by the property owner/business operator shall be grounds for rehearing and consideration by the Planning Commission for possible revocation of Conditional Use Permit 22-31.

Standard Condition 1.8 VIOLATION

In the event that the property owner/business operator violates or fails to comply with any of the conditions of approval of this permit, the City may take measures to cure such violations, including but not limited to, administrative citation and full reimbursement of the City for its costs and expenses, including but not limited to, attorney's fees, in undertaking such corrective action. Reimbursement of enforcement costs shall constitute a civil debt and may be collected by any means permitted by law. In the event that violations of this permit occur, the City shall refrain from issuing further permits, licenses or other approvals until such violations have been fully remedied.

Standard Condition 1.14 RESOLUTION ON HAND (Modified)

The property owner/business operator shall at all times maintain a copy of the approved resolution containing all the conditions of approval on site. Said resolution shall be provided for review upon request by any law enforcement officer or code enforcement inspector. The property owner shall provide a copy of the resolution to the tenant.

Standard Condition 1.15 OUTDOOR VENDING MACHINES

The property owner/business operator shall not operate or allow any outdoor vending machines on the site at any time.

Standard Condition 1.16 OUTDOOR DISPLAY OF MERCHANDISE

The property owner/business operator shall not display any merchandise outside of the building at any time unless approved by the Director of Community and Economic Development or designee through a Special Event Permit.

Standard Condition 1.18 LITTER

The property owner/business operator shall maintain the property in a clean and orderly condition at all times and remove all litter from the exterior areas around the premises, no less frequently than once each day prior to the close of business.

Standard Condition 1.36 HEALTH DEPARTMENT APPROVAL REQUIRED

The property owner/business operator shall obtain all necessary permits from the Orange County Health Care Agency if required.

Standard Condition 1.37 CONDUCT OF BUSINESS

The property owner/business operator shall, at all times, conduct business operations in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of La Habra.

Standard Condition 1.41 INDEMNIFICATION

To the maximum extent permitted by law, the applicant and any successor in interest shall defend, indemnify and hold harmless the City of La Habra and its elected and appointed officials, officers, agents and employees from and against any and all actions, claims, damages, liabilities and/or proceedings (collectively referred to as "action") arising out of or in any way relating to the applicant's project or any approvals granted by the City related to the applicant's project, including, but not limited to, any action to attack, challenge, set aside, void, or otherwise modify or annul the approval of any entitlement or permit relating to the project or the environmental review of any entitlement relating to the project. The indemnification and hold harmless shall include, but not be limited to, any

and all costs incurred by the City in defense of any action arising out of or relating to the applicant's project or any approvals granted by the City related to the applicant's project, including, but not limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the City (including an award of attorneys' fees), damages, and/or settlement costs. The City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by the City.

Standard Condition 7.16 NOISE/LOITERING PREVENTION

The property owner/business operator shall, at all times, display a sign of at least ten inches by ten inches at all exits and within the parking areas, requesting patrons to respect residents of adjacent residential neighborhoods by being quiet when leaving and by not loitering in the parking lot.

Standard Condition 7.18 CONTACT INFO FOR ON-SITE MANAGER

The property owner/business operator shall, at all times, post a sign in a clear and conspicuous location, listing a phone number at which a responsible on-site manager may be contacted during all hours which the businesses are open to address any complaints from the community. Said contact person's name and phone number shall be available through the staff at all times.

Standard Condition 7.19 DISORDERLY CONDUCT

The property owner/business operator shall not, at any time, permit loud, unruly or disorderly assemblages on the premises. The costs incurred by the City for multiple police responses to loud, unruly, or disorderly assemblages shall be the responsibility of the applicant, owner, and person in lawful custody of the premises.

Standard Condition 8.2 SANITARY SEWER SYSTEM PROTECTION

The property owner/business operator shall not, at any time, allow grease to run into the public sanitary sewer system.

Standard Condition 8.3 SMOKING REGULATIONS

The property owner/business operator shall, at all times, require all patrons to comply with the smoking regulations set forth by the State of California.

Standard Condition 8.6 NUISANCE PROHIBITION

The property owner/business operator and employees of the facility shall not, at any time, allow circumstances to develop that will adversely interfere with adjacent uses, the

community's economic welfare, nearby residential areas, or the operation of adjacent businesses, including, but not limited to, customer parking issues. Any such nuisance must be abated immediately upon notice by the City of La Habra.

Project Specific Conditions:

1. The hours of operation for the drive-through restaurant shall be limited to 4:00 a.m. to 11:00 p.m. seven days a week. Should the Applicant wish to modify the hours of operation, prior written authorization will be required to be obtained from the Planning Division.